



Federal Communications Commission
Washington, D.C. 20554

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In Reply Refer to:
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Mr. John Cullen
6500 North Allen Road (#64)
Peoria, IL 61614-2471

Monterey Licenses, LLC
2511 Garden Rd., Building A, Suite 104
Monterey, CA 93940

In re: WMBD(AM), Peoria, IL
Facility ID No. 42119
Monterey Licenses, LLC
File No. BR-20040802AFW

Application for Renewal of License

Informal Objection

Dear Mr. Cullen and Applicant:

This letter refers to: (1) the above-noted application of Monterey Licenses, LLC ("Licensee") to renew its license for Station WMBD(AM), Peoria, Illinois; (2) the July 22, 2004, Informal Objection ("Objection") to that application filed by John Cullen ("Cullen"); and (3) a responsive pleading filed by the Licensee on February 24, 2005. In his Objection, Mr. Cullen expresses his concern about the "ultra-conservative Republican" views reflected in the programming of the station. For the reasons set forth below, we deny the Informal Objection and grant the renewal application.

Discussion. Informal objections must, pursuant to Section 309(e) of the Communications Act of 1934, as amended (the "Act"), provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(k) of the Act,¹ which governs our evaluation of an application for license renewal.

¹ See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *affirmed sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

Specifically, Section 309(k)(1) provides that we are to grant the renewal application if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's Rules (the "Rules"); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.² If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”³

In his Objection, Mr. Cullen states that WMBD(AM) airs seven straight hours of “ultra conservative” programming per day. He also contends that the “screener” of the station’s local call-in show will not allow airtime for callers of differing viewpoints.

We have examined the Objection and find that it does not raise a substantial and material question of fact calling for further inquiry or otherwise persuade us that grant of the WMBD(AM) renewal application would contravene the public interest, convenience, and necessity. The role of the Commission in overseeing program content is limited. The First Amendment to the United States Constitution and Section 326 of the Act⁴ prohibit the Commission from censoring program material or interfering with broadcasters’ free speech rights. The Commission does regulate broadcast content where federal statutes direct it to do so. For example, the Commission enforces the statutory prohibition on the broadcast of obscene, indecent and profane material contained in 18 U.S.C. § 1464. However, it will not take adverse action on a license renewal application based upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.⁵ A licensee has broad discretion -- based on its right to free speech -- to choose, in good faith, the programming that it believes serves the needs and interests of the members of its audience.⁶ We will intervene in programming matters only if a licensee abuses that discretion.⁷ Mr. Cullen has not demonstrated that the Licensee has done so here. Accordingly, we deny the Informal Objection.

Conclusion. We have evaluated the WMBD(AM) renewal application pursuant to Section 309(k) of the Act, and we find that the station has served the public interest, convenience, and necessity

² 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

³ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁴ 47 U.S.C. §326.

⁵ See *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978).

⁶ See, e.g., *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (1993) (“*Philadelphia Station License Renewals*”), citing *Time-Life Broadcast, Inc.*, Memorandum Opinion and Order, 33 FCC 2d 1081, 1082 (1972), and *Office of Communications of United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983) (subsequent history omitted).

⁷ *Philadelphia Station License Renewals*, 8 FCC Rcd at 6401.

during the subject license term; there have been no serious violations of the Act or the Rules; and there have been no other violations which, taken together, constitute a pattern of abuse.

In light of the above discussion, and pursuant to Section 309(k) of the Communications Act of 1934, as amended, and Sections 0.61 and 0.283 of the Commission's Rules,⁸ the Informal Objection filed on July 22, 2004, by John Cullen IS DENIED, and the application (File No. BR-20040802AFW) of Monterey Licenses, LLC, for renewal of its license for Station WMBD(AM) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: David D. Oxenford, Esq.

⁸ 47 U.S.C. § 309(k); 47 C.F.R. §§ 0.61, 0.283.